

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ronny LOSFELD et al.
Title: LAYERED FILTER STRUCTURE COMPRISING SHORT
METAL FIBERS
Appl. No.: 10/531,414
International Filing Date: 10/06/2003
371(c) Date: 4/15/2005
Patent No.: 7,445,853
Grant Date: 11/04/2008
Examiner: Jason L. SAVAGE
Art Unit: 1794
Confirmation Number: 7979

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 11/04/2008 as U.S. Patent No. 7,445,853.

The Patent Office determined that the patent was entitled to 295 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C.

§ 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 498 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	498 days
(b) Total Applicant delay:	0 days
Final PTA Determination:	498 days

Applicants therefore respectfully request that the patent be accorded 498 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date December 10, 2008

By 

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Patent Term Adjustment Calculation System

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Docket Number: 016782-0324

Application Number: 10/531414

Patent Number: 7445853

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	04/15/2005	0		
	14 month From Application date	06/15/2006	426		
Edit Delete	Non-Final Office Action	04/06/2007	721	295	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/18/2007	794		
Edit Delete	Non-Final Office Action	09/07/2007	875		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/01/2007	930		
Edit Delete	Non-Final Office Action	01/24/2008	1,014		
	3 Year Period Starts	04/15/2008	1,096		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/24/2008	1,105		
Edit Delete	Notice of Allowance	07/03/2008	1,175		
Edit Delete	Issue Fee Paid	09/30/2008	1,264		
Edit Delete	Patent Grant Date	11/04/2008	1,299	203	
Totals:				498	0
PTA:				498	

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IP: 10.14.54.152

Foley & Lardner LLP